IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8014 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

YUNUS HABIB SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR SHAKEEL A QURESHI for Petitioner

MR MA BUKHARI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/07/2000

ORAL JUDGEMENT

1. The petitioner, holder of authorisation of fair price shop by this petition under Articles-226 and 227 of the Constitution, challenges the order of the respondents in the matter of cancellation of his licence for the

breach of conditions thereof and the provisions of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981. The licence / authorisation of the petitioner of the fair price shop was came to be cancelled under the order dated 1/9/1997 after notice to the petitioner by respondent no.3 on the ground that he forged the document, Storage Licence. Against this order, the petitioner preferred an appeal before the respondent no.2 and that appeal was came to be rejected on 24th December, 1997. The petitioner, then, taken up this matter in the revision before the State Government, that has also been rejected. Hence, this Special Civil Application.

2. The learned counsel for the petitioner contended that all the three authorities have committed a serious illegality in passing the order against the petitioner as it is not the contravention of any of the provisions of the order aforesaid as well as the condition of the licence. It is contended that cancellation of the licence of the petitioner is permissible only in a case where the petitioner has been convicted by the Court of law for the contravention of any order made under section-3 of the Act. Here, the petitioner has not been convicted for any offence by the Court of law for the contravention of the order made under section-3 of the Essential Commodities Act. In support of this contention, he made reference to clause-9 of the Order aforesaid.

3. The learned counsel for the respondents submitted that it is a case where the petitioner has forged the Storage Licence. This Licence has to be granted by the Corporation and for this aforesaid document, a criminal complaint has already been filed by the Corporation against the petitioner. It is contended that after taking necessary certification from the Corporation that no such certificate has been issued, this action has been taken. Learned counsel for the respondents made reference to the relevant provisions of the order and contended that the licence for storage has to be obtained by the petitioner and when he forged this document, this is a good ground for cancellation of the licence/authorisation.

4. I have give my thoughtful consideration to the submissions made by the learned counsel for the parties.

5. I do not find merits in any of the contentions raised by the learned counsel for the petitioner. All the three authorities have concurrently held that a forged

Storage Licence has been produced by the petitioner. It is true that in the criminal complaint filed by the Corporation, the petitioner has not been convicted, but that is not relevant here. The petitioner has forged the Storage Licence for which prima facie the authorities have recorded satisfaction and the licence has been rightly cancelled.

6. The learned counsel for the petitioner has failed to produce any documentary evidence from the Corporation in this Special Civil Application to show and establish to the satisfaction of the Court that the licence was not forged by him and it is a genuine licence validly granted to him. Before action has been taken, the Collector has recorded his satisfaction after making the necessary enquiries from the Corporation in the matter.

7. A person who forge a document is not to be given any relief by the Court under its extra ordinary equitable jurisdiction. It is a case where the petitioner has been given licence for the fair price shop and if he has been indulged in such activities, how far it is safe and in the public interest, to continue this licence with him. It is not unknown that complaints are being received that the holder of the fair price shops are not fairly distributing the essential commodities to the poor persons/consumers. They are indulged in the malpractices as well as selling these essential commodities in open market. The clause-9 of the Order, 1981, is of no help to the petitioner. If his contention is accepted then he has to be permitted to continue as a licensee, that is, to give benefit to a person who forged the document. Forgery is an offence for which the petitioner will be appropriately punished on proof of charge by the Criminal Court by sending him to the jail, but if the authorities are satisfied that the storage Licence produced is a forged document and the petitioner is unable to prove contrary, then this is a good ground for cancellation of the licence to which no exception can be made. However, whatever findings are recorded by the authorities and by this Court may not be taken to be a proof for the forgery in the Criminal Court. In the Criminal Court, the offence is to be proved beyond reasonable doubt by the State. This is to be made clear so that this judgement may not be taken as if a finding of the forgery committed by the petitioner has been given by this Court. Whatever findings recorded and given in this judgement, are only to be taken and read for the purpose of the proceedings initiated by the respondents for cancellation of the licence of the petitioner.

8. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. The petitioner is directed to pay Rs.500/- as the costs of this petition to respondent no.1.

(S.K. Keshote, J.)

(kamlesh)